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FILED

AUG 02 2007

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

25923-4-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, APPELLANT

v.

JAMES D. RIVARD, RESPONDENT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

RESPONDENT'S BRIEF

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A. ISSUE

1. Whether the trial court erred by restoring Mr. Rivard's right to possess a firearm?

B. STATEMENT OF THE CASE

Mr. Rivard was charged on February 8, 1994, with Vehicular Homicide under former RCW 46.61.520 as the result of an accident that occurred on December 1, 1993. (CP 72) At the time of the accident, vehicular homicide was a class "B" felony.

Mr. Rivard's first trial ended in a mistrial on July 6, 1994, when the jury could not reach a verdict. Prior to a second trial, the trial court ordered the results of Mr. Rivard's blood test suppressed. The Court of Appeals eventually accepted discretionary review, and issued an opinion affirming the trial court in February, 1996.¹ The State appealed, and the State Supreme Court accepted review, reversed, and issued an opinion in January, 1997.²

Meanwhile, in 1996, the legislature amended the statute and reclassified vehicular homicide as a Class "A" felony. (Laws of 1996, ch. 199 §7)

¹ *State v. Rivard*, 80 Wn. App. 633, 910 P.2d 520 (1996).

² *State v. Rivard*, 131 Wn.2d 63, 929 P.2d 413 (1997).

On June 20, 1997, Mr. Rivard entered a Statement of Defendant on Plea of Guilty, pursuant to a plea agreement. (CP 72) He was sentenced under the First Offender Option to 90 days confinement, with 30 days of work release and the remainder in home detention. (See Exhibit C, CP 28) At that time, the First Time Offender Option was unavailable to a defendant convicted of a Class A felony. (Former RCW 9.94A.030(22); former RCW 9.94A.030(38)(a)) (CP 62)

Mr. Rivard reported to custody on July 7, 1997, served his time, paid his legal financial obligations and was granted a Certificate and Order of Discharge on November 30, 1999. (CP 73) Other than the conviction for vehicular homicide, Mr. Rivard has no criminal history. (CP 73)

Mr. Rivard's conviction left him ineligible to possess a firearm. RCW 9.41.040(1)(a) (precluding firearm possession by individuals convicted of "serious offenses"); RCW 9.41.010(12)(k) (defining vehicular homicide as a "serious offense").

On September 20, 2006, Mr. Rivard filed a petition for restoration of his right to possess firearms. (CP 1-57) He argued that the Superior Court could reinstate his right under the court's general jurisdictional authority. (CP 13-14). Mr. Rivard also argued that under the savings clause, RCW 10.01.040, his conviction of a Class B felony remained a

class B felony, despite the legislature's subsequent reclassification. (CP 14-18)

Finally, Mr. Rivard argued that the plain meaning of RCW 9.41.040(4)(b)(i) referring to "prior convictions" means other previous felony convictions, or felony convictions that were incurred previously, in addition to the disabling felony. (CP 44-56)

The trial court agreed. (CP 72-76) The court noted that in 1997, after the legislature had reclassified the crime as a Class "A" felony, and upon entry of Mr. Rivard guilty plea, he was given a sentence under the First Time Offender Option, which was unavailable to a defendant convicted of a Class A felony. (CP 72)

The trial court found that under the Savings Clause, Mr. Rivard's conviction for Vehicular Homicide remained a Class "B" felony for purposes of restoring his firearm rights.

Additionally, the court found that the language of RCW 9.41.040(4)(b)(i) referring to a conviction of a felony means the classification of the felony at the time of the conviction, not any subsequent reclassification of the crime. (CP 73) The court also found that the plain meaning of RCW 9.41.040(4)(b)(i) that refers to "prior felony convictions" is felony convictions other than the disabling felony conviction. (CP 73)

The court concluded that because Mr. Rivard had no other prior felony convictions that would prohibit possession of a firearm counted as part of the offender score under RCW 9.94A.525, he had fulfilled all the requirements of RCW 9.41.040 and the court restored his right to possess firearms. (CP 74-76)

The State appealed.

C. ARGUMENT

1. THE STATE'S ARGUMENT THAT THE SAVINGS CLAUSE DOES NOT APPLY IS UNSUPPORTED BY AUTHORITY AND IS INCORRECT.

The State argues that the classification of a crime that is controlling in the context of a petition for restoration of gun rights, is the classification of the crime at the time the petition to restore the rights is filed. Yet the State fails to cite any legal authority to support this assertion. Indeed, it appears none exists.

The State attacks the court's reliance upon the savings clause because, the State argues, that statute was designed simply to "save repealed statutes." (App. Br. at 5) The State argues that because the vehicular homicide statute was not repealed, only amended, the savings clause does not apply.

The State is mistaken. The State's argument ignores the plain wording of the savings clause statute, that indicates the statute applies both to repealed and to *amended* statutes. The title of the statute is: "Statutes -- Repeal or *amendment* -- Saving clause presumed." (Emphasis added).

Also, the second half of the statute repeatedly refers to amended statutes:

No offense committed and no penalty or forfeiture incurred previous to the time when any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, unless a contrary intention is expressly declared in the repealing act, and no prosecution for any offense, or for the recovery of any penalty or forfeiture, pending at the time any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, but the same shall proceed in all respects, as if such provision had not been repealed, unless a contrary intention is expressly declared in the repealing act. Whenever any criminal or penal statute shall be *amended* or repealed, all offenses committed or penalties or forfeitures incurred while it was in force shall be punished or enforced as if it were in force, notwithstanding such *amendment* or repeal, unless a contrary intention is expressly declared in the *amendatory* or repealing act, and every such *amendatory* or repealing statute shall be so construed as to save all criminal and penal proceedings, and proceedings to recover forfeitures, pending at the time of its enactment, unless a contrary intention is expressly declared therein.

RCW 10.01.040 (emphasis added).

Under the plain language of the savings clause, the statute applies to this case. Whenever a criminal statute is amended, "all ... penalties or forfeitures incurred while it was in force shall be punished or enforced as

if it were in force notwithstanding such amendment....” The loss of the right to possess firearms as a result of committing a crime is a State-imposed penalty:

Clearly, restricting a persons’ right to possess a firearm, as a consequence of a criminal conviction, is punishment. The common understanding of “punishment” is a “sanction-such as a fine, penalty, confinement, or loss of property, right, or privilege-assessed against a person who has violated the law.” *Black’s Law Dictionary* 1247 (7th ed.1999). When a person commits a crime, the State imposes punishment as a consequence of the criminal act. A convicted felon loses the right to liberty through incarceration or probation and may lose property in the form of a fine or forfeiture of real property. A convicted felon may also lose certain other constitutional rights. For example, a convicted felon loses the right to vote and, ... a convicted felon’s right to possess firearms is restricted. *Loss of liberty, property, the right to vote, and the right to possess a firearm collectively encompass the punishment the State imposes on a convicted felon.*

State v. Schmidt, 143 Wn.2d 658, 683, 23 P.3d 462 (2001) (Johnson, J. dissenting) (emphasis added).

The State asserts that the reason the savings clause does not apply to this case is because “[a] request to have gun rights restored is an entirely separate and new action.” (App. Br. at 5) The State also argues that it “is not seeking to ... impose more incarceration or fines or probation or anything else related to the disabling crime.” (App. Br. at 6)

The State fails to appreciate that the loss of the right to possess a firearm is a penalty that is inseparable from the crime. The fact that a

convicted felon must commence a new, civil petition to restore the lost right is immaterial. Because the loss of the right to possess firearms was part of Mr. Rivard's punishment, under the savings clause, he is entitled to seek restoration of his rights as if the vehicular homicide statute had never been amended to reclassify the crime as a Class "A" felony. The trial court correctly concluded that applying the savings clause, Mr. Rivard's conviction should be considered a Class B felony for purposes of his petition to restore his right to possess firearms.

2. THE TRIAL COURT CORRECTLY FOUND
THAT MR. RIVARD WAS ELIGIBLE TO
RESTORE HIS RIGHT TO POSSESS FIREARMS
IN LESS THAN TEN YEARS.

The State maintains that the trial court erred by construing RCW 9.41.040(4) to require only five crime-free years before a felon is eligible to petition for restoration of gun rights.

(a) The Reference In RCW 9.41.040(4)(b)(i) To
"Prior" Felonies Does Not Apply To The
Disabling Felony.

Under RCW 9.41.040(4)(b)(i), Mr. Rivard may petition for restoration of his right to possess a firearm if he has spent five or more consecutive years in the community without being convicted or currently charged with any felony or misdemeanor crimes, and if he has no "prior"

felony convictions that would count as part of an offender score under RCW 9.94A.525. The relevant portion of the statute provides:

(4) [A] person convicted ... of an offense prohibiting the possession of a firearm under this section ... who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from possession of a firearm as a result of the conviction.... Notwithstanding any other provisions of this section, if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section and has not previously been convicted or found not guilty by reason of insanity of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, the individual may petition a court of record to have his or her right to possess a firearm restored:

* * *

(b) (i) If the conviction or finding of not guilty by reason of insanity was for a felony offense, after five or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has *no prior felony convictions* that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525....

RCW 9.41.040(4) (emphasis added).

The State adopts the position that “prior felony convictions” applies to the disabling felony, and therefore the petitioner must wait the time period specified in the RCW 9.94A.525.

Under RCW 9.94A.525, Class B prior felony convictions are not included in the offender score, if since the last date of release from

confinement, pursuant to a felony conviction or entry of judgment and sentence, the offender has spent ten consecutive years in the community without committing any crime that subsequently results in a conviction. RCW 9.94A.525(2).

First, no caselaw supports the State's interpretation of RCW 9.41.040(4). Additionally, the State's interpretation is contrary to the established principles of statutory construction.

- (i) Rules Of Statutory Construction
Compel That Five Years, Not Ten
Years, Governs Mr. Rivard's
Waiting Period To Restore His
Firearm Rights.

The primary rule of statutory construction is that courts must ascertain and declare the intention of the legislature. *Krystad v. Lau*, 65 Wn.2d 827, 400 P.2d 72 (1965); *McDermott v. Kaczmarek*, 2 Wn. App. 643, 647, 469 P.2d 191 (1970). The intent must be determined primarily from the language of the statute itself. Words must be given their commonly understood meaning if possible. *McDermott*, 2 Wn. App. at 647. Where uncertainty exists, the court must resort to other recognized rules of statutory construction. *Krystad v. Lau, supra*.

In attempting to ascertain legislative intent, the court examines all of the applicable statutes and harmonizes ambiguous or conflicting provisions. *Dolman v. Dep't of Labor & Indus.*, 105 Wn.2d 560,

564-565, 716 P.2d 852 (1986). The court will not treat words in a statute as meaningless, even in those cases where the statute seems peculiar. *State v. Tandeki*, 153 Wn.2d 842, 847, 109 P.3d 398 (2005); *see Cox v. Helenius*, 103 Wn.2d 383, 387-88, 693 P.2d 683 (1985) (“We are required, when possible, to give effect to every word, clause and sentence of a statute. No part should be deemed inoperative or superfluous unless the result of obvious mistake or error.”)

Under the State’s interpretation, the firearm restoration statute and the offender score statute are in conflict. The firearm statute indicates that an offender may petition to restore his or her rights after five years, but the offender score statute requires a waiting period of ten years.

RCW 9.41.040(4)(b)(i) explicitly states that an offender may petition to have his right to possess a firearm restored “after five or more consecutive years in the community....” RCW 9.41.040(4)(b)(i). The same provision also states that the firearm rights may be restored “if the individual has no *prior* felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525....” RCW 9.41.040(4)(b)(i) (emphasis added).

Under RCW 9.94A.525, Class A felonies are always included as part of an offender score, Class B felonies -- other than sex offenses -- are

included for ten years, and Class C felonies are included for five years. RCW 9.94A.525(2).

If the State's interpretation that RCW 9.94A.525 controls the waiting period for RCW 9.41.040, then the legislature's language indicating that an offender may petition for restoration of firearm rights after five years is meaningless. Under the State's interpretation, an offender with a disabling Class B felony would never be eligible for restoration of rights after five years because Class B felonies are counted as part of an offender score for ten years under RCW 9.94A.525. This interpretation is contrary to the rules of statutory construction and therefore, is incorrect.

A logical interpretation that harmonizes the two statutes is to construe the term "prior felony convictions" to relate to convictions other than the disabling conviction, or a conviction that existed prior to the disabling conviction. In other words, an offender in the same position as Mr. Rivard, with no prior convictions, convicted of a single Class B felony, would be eligible for restoration of firearm rights after five years, not ten years, as indicated in RCW 9.41.040. This interpretation harmonizes the two statutes and eliminates the conflict.

Additional support for this interpretation is found in the subsection that immediately follows, the misdemeanor provision,

RCW 9.41.040(4)(b)(ii), governing when offenders with disabling misdemeanors are eligible for restoration of firearm rights. The misdemeanor provision includes identical “prior felony convictions” language as the felony provision. The misdemeanor provision states in part that an offender may petition for restoration of firearm rights:

if the conviction was for a nonfelony offense ... after three or more consecutive years in the community without being convicted ... or currently charged ... if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525 and the individual has completed all conditions of the sentence.

RCW 9.41.040(4)(b)(ii).

Because this provision uses the identical language “prior felony convictions,” it must be concluded that a “prior” felony conviction relates to convictions other than the disabling conviction, because by definition those that fall within this subsection do not have a disabling felony conviction.

In other words, the misdemeanor offender’s disability conviction is a misdemeanor, not a felony. As a result, the explicit language directs the court to look to the offender’s prior felony convictions, not the disabling conviction. The State’s interpretation, as applied to RCW 9.41.040(4)(b)(ii), the misdemeanor offenders is incongruous. The State’s interpretation cannot be applied to misdemeanor offenders, and

therefore this interpretation is erroneous because it cannot be applied to the entire statute.

Where general and special laws are concurrent, the special law applies to the subject matter contemplated by it to the exclusion of the general law. *State v. Walls*, 81 Wn.2d 618, 622, 503 P. 2d 1068 (1972); *Mercer Island v. Walker*, 76 Wn.2d 607, 458 P.2d 274 (1969). And a related rule holds that where a general statute and a subsequent special law relate to the same subject, the provisions of the special statute must prevail. *State v. Collins*, 55 Wn.2d 469, 348 P.2d 214 (1960).

In this case, the specific law at issue is the restoration of firearm rights statute, RCW 9.41.040. The general law is the offender score sentence statute. Under the laws of statutory construction, the law governing the specific circumstances – the restoration of firearm rights – controls here. As a result, Mr. Rivard is eligible for restoration of his firearm rights after five years, not ten.

b. *State v. Graham* Is Distinguishable.

The State relies upon *State v. Graham*, 116 Wn. App. 185, 64 P.3d 684 (2003), which is distinguishable from this case. In *Graham*, Division II was asked to review a superior court decision that restored a convicted sex offender's firearm rights. Mr. Graham was convicted of second degree child rape, a sex offense and a class A felony. He had no

other criminal convictions. The trial court reinstated Mr. Graham's firearm rights.

In reversing the trial court, Division II analyzed the language of RCW 9.41.040(4):

Notwithstanding any other provisions of this section, if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section and *has not previously been convicted* ... of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, the individual may petition a court of record to have his or her right to possess a firearm restored....

RCW 9.41.040(4) (emphasis added).

The Superior court held that the reference to the "previous" conviction of a sex crime in RCW 9.41.040(4) meant a conviction in addition to the disabling second degree rape conviction. Division II reversed, holding that such an interpretation led to a result that was contrary to legislative intent.

Specifically, Division II found that the legislature intended that two classes of offenders could never restore their firearm rights: (1) convicted sex offenders and (2) those convicted of a Class A felony or a crime with a maximum sentence of 20 years. *Graham*, 116 Wn. App. at 188-89. The court concluded that a "logical interpretation" of the provision was that Mr. Graham's sex offense conviction was a separate

reason, aside from his class A felony that made him ineligible to restore his firearm rights. “Any other interpretation would lead to the absurd result of allowing an individual to be convicted of two sex offenses before losing the right to own and possess firearms.” *Graham*, 116 Wn. App. at 189.

Graham applies only to sex offense, class A felony cases. As the *Graham* court noted, the legislature clearly intended that certain offenses would leave the offender without the ability to ever restore firearm rights. One of the bases for the decision that Mr. Graham was not entitled to restoration of his rights was that the type of crime – the sex offense – was a separate reason from his felony conviction that left him unable to ever have his firearm rights restored.

An analysis of the statute supports this conclusion. The introduction of the petition provision in RCW 9A.040(4) specifically addresses “previous” convictions that will initially disqualify firearm restoration:

if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section and *has not previously been convicted* ... of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this section and/or felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, the individual may petition a court of record to have his or her right to possess a firearm restored...

RCW 9.41.040(4) (emphasis added). If none of the initially disqualifying convictions is present, then the court next examines the specific provisions set forth under subsections (a) – (b) to determine when the person is eligible for restoration of firearm rights.

Thus, *Graham* rested on the basis that Mr. Graham had been “previously” convicted of a sex offense, and therefore was disqualified under the introduction portion of the petition provision, RCW 9.41.040(4). The *Graham* court’s interpretation of “previously convicted” in the initial disqualifying provision cannot be applied to “prior offense” in RCW 9.41.040(4)(b)(i) without rendering much of the statute meaningless.

Mr. Rivard’s case does not implicate the portion of RCW 9.41.040(4) at issue in *Graham*. Mr. Rivard has no disqualifying offense, such as a sex offense, or a Class A felony. As a result, the reasoning applied in *Graham* is inapplicable to this case.

3. ATTORNEY GENERAL OPINIONS SUPPORT
MR. RIVARD’S INTERPRETATION THAT AN
ANALYSIS OF WHETHER FIREARM RIGHTS
CAN BE RESTORED IS ANSWERED BY
REFERRING STRICTLY TO RCW 9.41.040.

Additional support for Mr. Rivard’s position that the wash-out statute does not relate to the disabling felony and therefore does not

control the firearm restoration statute is found in two State Attorney General opinions, *Op. Atty. Gen. 1988 No. 10* and *Op. Atty. Gen. 2002 No. 4*.

In 1988, a State Senator asked the Attorney General for its opinion regarding several scenarios related to the restoration of firearms after convictions. One of the issues raised involved whether a person who was convicted of a crime of violence, a felony where a firearm was displayed, or a felony violation of the UCSA would be eligible to receive a license to carry a concealed firearm, upon vacation of the record of his conviction under RCW 9.94A.230.

The AG analyzed whether an offender who had completed probation and whose information has been dismissed has been released from all penalties and disabilities relating to the conviction, including the right to possess a firearm. (AGO 2002, No. 4 at 4)

In part, the AG noted that subsection (4) recognized the restoration of firearm rights in some cases for persons who have received probation followed by a dismissal of discharge. But the AG concluded that based upon the language of RCW 9.41.040(4), probation followed by dismissal does not affect firearm possession rights unless the conviction involved one of the listed crimes that precluded restoration of the rights.

In other words, whether firearm rights could be restored is answered strictly by referring to the firearm restoration statute, RCW 9.41.040, and not other statutes related to post conviction relief.

Statutes on the same subject matter must be read together to give each effect and harmonize each with the other. *US West And Transp. Comm'n*, 134 Wn.2d 74, 119, 949 P.2d 1337 (1997)(citing *Bour v. Johnson*, 122 Wn.2d 829, 835, 864 P.2d 380 (1993)). While RCW 9.95.240 covers the broad subject of consequences of dismissing a probation, RCW 9.41.040 governs restoration of the right to possess a firearm, while RCW 9.95.240 relates more generally to “penalties and disabilities” arising from a criminal conviction. Even if the two statutes read to conflict (and we do not think they would be), the rule of construction would favor the later and more specific statute (here, RCW 9.41.040) over the general one. *See Wark v. Nat'l Guard*, 87 Wn.2d 864, 867, 557 P.2d 844 (1976).

(AGO 2002, No. 4 at 5)

Later in the opinion, the AG applied the same reasoning to the question of whether an offender who had the record of conviction vacated was therefore eligible for restoration of firearm rights. Again, the answer was “no” because the specific statute, RCW 9.41.040, controlled.

While the AG opinion addressed the question presented in this case in the reverse, the reasoning presented should be applied in this case as well. Because RCW 9.41.040 is a specific statute, the requirements of that statute -- and only that statute -- control whether the right to possess

firearms should be restored. Whether a disabling conviction is eligible for wash-out is immaterial to this consideration.

The AG also issued an earlier opinion in 1988 with a similar conclusion. In that opinion, the AG found that even where the court vacated a record of conviction under RCW 9.94A.230, “such a vacation does not bring to bear the authorization to own or possess a pistol contained in RCW 9.41.040(3).” (AGO 1988 No. 10 at 8)

Similarly, whether the disabling conviction has washed is immaterial to whether a person may have the right to possess a firearm restored. The court must look strictly to the specific statute that governs the petition to restore firearm rights, RCW 9.41.040.

4. THE SUPERIOR COURT MAY REINSTATE
MR. RIVARD’S RIGHT TO POSSESS
FIREARMS UNDER THE COURT’S GENERAL
JURISDICTIONAL AUTHORITY.

The Court of Appeals may affirm a trial court’s decision on any ground supported by the record. *State v. Avery*, 103 Wn. App. 527, 538, 13 P.3d 226 (2000).

Washington State Superior courts are constitutional courts, Wash. Const. art. IV, § 6, and thus have general jurisdiction:

[The State Constitution] created the superior courts of the respective counties as constitutional courts, as distinguished from statutory courts, and clothed the

superior courts with general jurisdiction in all cases and over all proceedings in which jurisdiction was not exclusively vested by law in some other forum or court.

In re Dillenburg v. Maxwell, 70 Wn.2d 331, 351-352, 422 P.2d 783 (1967). As a result, the superior court has general jurisdiction over all cases and all proceedings that are not by law vested in some other forum or court. *Id.* at 351-52.

Mr. Rivard's petition for reinstatement of his right to possess a firearm falls within the superior court's jurisdiction and authority. *See State v. Smith*, 118 Wn. App. 464, 471, 76 P.3d 769 (2003) (J. Sweeney, concurring). The superior court may, without proceeding under RCW 9.41.040(4), restore the right to possess firearms, as noted by Judge Sweeney in his concurrence:

[S]uperior courts in this state are constitutional courts. WASH. CONST. art. IV, § 6. And as such, those courts have general jurisdiction over all cases and all proceedings which are not by law vested in some other forum or court... [The petitioner's] petition for the right to possess a firearm certainly falls within the court's jurisdiction and authority. There is, moreover, no statutory prohibition to the trial court's granting Mr. Smith a right to possess a firearm under its constitutional general jurisdiction authority. ... the superior court would have had the authority absent this statute to grant Mr. Smith the right to possess a firearm....

Smith, 118 Wn. App. at 470-471 (2003) (J. Sweeney, concurrence)
(citations omitted)

The Superior Court had the inherent authority, notwithstanding RCW 9.41.040(3), to restore Mr. Rivard's right to possess firearms. On appeal, the Court of Appeals can affirm the restoration of Mr. Rivard's right to possess firearms under the general jurisdiction of the superior court.

D. CONCLUSION

The Savings Clause, by its very language, applies to statutes that have been amended. The trial court correctly applied the savings clause to determine that Mr. Rivard's conviction for vehicular homicide remained a Class B felony, and thus he was eligible for restoration of his firearm rights.

Because Mr. Rivard's disabling conviction was a class B felony, and because he has no other "prior" felonies, under RCW 9.41.040(4)(b)(i), he is now eligible for reinstatement of his right to possess firearms. The State's interpretation that he must wait until the disabling conviction has washed under RCW 9.94A.525 is contrary to statutory construction, and therefore incorrect. The trial court did not err

in reinstating Mr. Rivard's petition to restore his firearm rights.

Dated this 2nd day of August, 2007.

GEMBERLING & DOORIS, P.S.


Julia A. Dooris #22907
Attorney for Respondent

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION III

STATE OF WASHINGTON,)	
)	
Appellant,)	No. 25923-4-III
)	
vs.)	CERTIFICATE
)	OF MAILING
JAMES D. RIVARD,)	
)	
Respondent.)	

I certify under penalty of perjury under the laws of the State of Washington that on August 2, 2007, I delivered a copy of the Respondent's Brief in this matter to:

Andrew J. Metts
Deputy Prosecuting Attorney
1115 West Broadway
Spokane, Washington

and mailed a copy to:

James Douglas Rivard
SRM Development
104 South Division
Spokane, WA 99202

Signed at Spokane, Washington on August 2, 2007.


Catlin Claire Heberer
Legal Assistant